



Letting off steam

Honest opinions from surgeons operating at the coal face of our health service

Medical manslaughter and the case of David Sellu

Peter McDonald, Consultant Surgeon at Northwick Park and St Mark's Hospital

When David Sellu's conviction for gross negligence manslaughter was quashed late last year the medical profession could have been forgiven if they felt some relief. The appeal was supported by friends and supporters of David Sellu in their hundreds across the country. In their different ways they mobilised the lawyers, the medical defence organisation involved and the media. They tried to involve other medical organisations but with limited success. Somehow the latter failed to understand that a critical line had been crossed when Sellu was convicted. Articles were written and a national meeting organised. Websites were developed and money was raised allowing many to express their support. So began the campaign that would culminate in the Court of Appeal upholding the appeal on 15 October 2016.

But by that time David Sellu had done his time in hell. First Belmarsh, then High Point North and finally an open prison. By his own account he wondered why he was so high risk as to be sent to the most notorious prison in the UK, and was stunned that he was treated in ways he did not think possible in modern Britain. By early 2013, when he was charged with gross negligence manslaughter, his career was finished. The hospital where the incident took place had long since suspended him, against the advice of their own Medical

Advisory Committee. His old NHS hospital (Ealing) held on to him for as long as possible because he had been the most valuable and constant member of their surgical consultant team for a decade and a half.

For my part, when I first learnt of the hammer blow that was David Sellu's conviction for manslaughter in November 2013, I was

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absolutely certain a miscarriage of justice had occurred. In most matters concerning the law, being a naïve and law-abiding citizen, I would have previously accepted that Britain had a fair legal system – the courts knew best and only the guilty are convicted. But this case was different. I knew the man concerned and had a high regard for his honesty, compassion and the way he practised medicine.

Indeed as I learned more about the case that had led to his conviction, perforated diverticular disease presenting insidiously, I knew that I, and all of my fellow general surgeons, had been in this position many times. We all know it is difficult to spot how ill a patient is with abdominal sepsis. Many patients with the same condition of perforated sigmoid diverticulitis present to casualty departments in the middle of the night and are sent home by senior, competent doctors with a diagnosis of constipation only to return *in extremis* the next day. Moreover, it is widely known that delay in these cases is not that unusual. A recent NELA audit showed that 60% of NHS patients who need urgent laparotomy did not reach theatre in the optimum time. So to convict a surgeon in hindsight for not getting a patient to theatre in time seemed very unfair.

With Sellu's conviction the shock wave that ripped through the profession at that time cannot be underestimated. This was not just the old feeling of *there but for the grace of God go !!*. There was disquiet of the highest order. A few weeks after the verdict I remember rushing in the middle of the night to the same hospital that that had so poorly supported Sellu, thinking *if I do not stop this postoperative bleeding I too might be charged with manslaughter*. What a state of affairs we had reached. No surgeon would ever in the

future contemplate a career in surgery with such a clear and present danger.

The responses to Sellu's plight were mixed. As the patient had been treated in the private sector, some young surgeons were wondering whether it might be best to avoid private practice altogether. More mature ones began talking about early retirement. All were in a state of fear. Others, both patients and doctors, contacted the *Friends of David Sellu* website with glowing testimonials and sympathy. Not everyone was generous in their response. Some thought that since he had lied about timings of some of the interventions he had it coming to him. However, at his subsequent trial he was not found guilty of perjury.

At one point in the proceedings the President of the Court, Sir Brian Leveson, echoed the late Lord Denning by musing that the sanction of gross negligence manslaughter

ought not to be applied to clinicians except in extreme circumstances, as many of their patients are already dying before the alleged reckless actions take place. With an optometrist, paediatrician and a nurse recently convicted of manslaughter there is perhaps an undercurrent of feeling that it is all getting out of hand.

Leveson too was greatly troubled that the prosecution witnesses had incorporated the words *gross negligence* in their reports at several points in their witness statements. He felt unequivocally that it was the task of the jury, under direction of the trial judge, and not the expert witnesses to ascertain if that was actually the case. In the final analysis it was the judge's failure to point out to the jury the magnitude of the difference between negligence and gross negligence (ie manslaughter) that led to the quashing of the conviction.

We can now ask why Sellu's incarceration came about in the first place. Was it a misunderstanding of all the lay people involved, from coroner to jury, that peritonitis is both difficult to spot and lethal in its effect? Was it a failure of the defence?

What is clear is that the whole medical profession must learn from the unnecessary wrecking of this consultant's reputation and career. Although no doctor can believe they are above the law, the public and the lawyers need to understand that what we do for a living on behalf of our sick patients is fraught with uncertainty and danger. When things go badly complications are best discussed in a transparent, no-blame environment as emphasised in the Berwick report of 2013. This allows lessons to be learned and the future care for all patients improved.